

HUMAN SERVICES BOARD

INTRODUCTION

A telephone status conference was held on November 27, 2006 at which the Department raised the legal issue whether petitioner could seek to increase the adoption subsidy over the statutory cap. The Department was asked to submit a Motion to Dismiss, and the petitioner was asked to respond to the Motion. The petitioner did not originally respond to the Motion. Subsequent to the hearing officer submitting a recommended decision to the Board, the petitioner wrote the Board indicating he had not received the Motion and setting out his disagreement. After reviewing the submission, the Board makes the following decision.

ORDER

The Department's Motion to Dismiss is granted.

DISCUSSION

The petitioner has applied for a change to the adoption subsidy he receives from the Department. Adoption subsidies for special needs children are governed by the Adoption Assistance and Child Welfare Act. 42 U.S.C. § 670 *et seq.* Vermont participates in the Foster Care and Adoption Assistance program and has adopted Policy 193 incorporating the federal requirements. Policy 193 is set out in the Family Services Manual.

Prior to the adoption of a special needs child, the adopting parents apply for the subsidy. If the adopting parents establish that they meet the eligibility criteria for the program, the adopting parents and the Department will negotiate the amount and type of subsidy. 42 U.S.C. § 673, Vermont Policy 193. However, there is a caveat governing the adoption subsidy amount.

Congress placed a cap upon the amount of the adoption subsidy. In particular, 42 U.S.C. § 673(a)(3) provides:

The amount of the payments to be made. . .shall be determined through agreement between the adoptive parents and the State or local agency administering the

program under this section, which shall take into consideration the circumstances of the adopting parents and the needs of the child being adopted, and may be readjusted periodically, with the concurrence of the adopting parents (which may be specified in the adoption assistance agreement), depending on changes in circumstances. **However, in no case may the amount of the adoption assistance payment...exceed the foster care maintenance payment which would have been made during the period if the child with respect to whom the adoption assistance payment is made had been in a foster family home.** (emphasis added)

See Vermont Policy 193 which restates the Congressional cap. This policy is incorporated into the Adoption Assistance Agreements signed by the petitioner and the Department.

Petitioner applied for the adoption subsidy in April 2005 prior to the finalization of the adoption. At that time, petitioner received \$783.01 monthly in foster care payments from the Department. Petitioner and the Department entered into an Adoption Assistance Agreement on or about May 20, 2005 setting adoption subsidy payments in the amount of the foster care payments petitioner was receiving.¹ Petitioner is now seeking to amend the adoption subsidy to \$1,500 per month.

¹ The parties subsequently amended the Adoption Assistance Agreement on or about August 2, 2006 to allow the subsidy to continue to December 31, 2006 or until the child is out of school, whichever occurs first.

The statutory language setting out the cap on adoption subsidy payments is clear and unambiguous--the amount of the monthly adoption subsidy cannot exceed the amount of monthly foster care payments if the child had remained in foster care. This cap has been incorporated into the Adoption Assistance Agreement signed by the parties.

The Department has represented that the subsidy payment in this case is at the cap. The parties are bound by the cap created by Congress. Petitioner argued that he had received a higher payment before the adoption. Even if the adoption subsidy amount was lower than the cap, the amount cannot be changed absent the agreement of both parties. DCF Policy 193. Such agreement does not exist here.

Moreover, the Board is bound by the unequivocal language of the statute and regulations. The Human Services Board does not have the authority to enter into a decision that would supersede the statutory cap. Our statutory authority states "[t]he board shall not reverse or modify agency decisions which are determined to be in compliance with applicable law, even though the board may disagree with the results effected by those decisions." 3 V.S.A. § 3091(d).

Accordingly, the Department's Motion to Dismiss is granted.

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